



King County

Department of Executive Services

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ORDER ON MOTIONS IN LIMINE

**INQUEST INTO THE DEATH OF DAMARIUS DEMONTA BUTTS
INQUEST # 517IQ8013**

PARTIES PRESENT:

- Family of the decedent: Mother of Damarius Demonta Butts present and represented by Adrien Leavitt and La Rond Baker
- Law enforcement officers: Seattle Police Department Officers Elizabeth Kennedy, Christopher Myers, Joshua Vaaga and Canek Gordillo represented by Evan Bariault and Ted Buck (officers not present at this hearing)
- Employing government department: Seattle Police Department, represented by Ghazal Sharifi, Kerala Cowart and Tom Miller.
- Administrator: Michael Spearman assisted by Matt Anderson

The Inquest Administrator, having presided over a Pre-Hearing Conference on March 1, 2022, and having heard from the parties, hereby orders the following with regard to each motion brought by the parties:

1. The Involved Officers (IOs) ask to revisit the decision to not call Adrianna Butts as a witness and to prohibit any reference to her by name by any witness or party. I deny the requests. The IOs base their request on RCW 36.24.050 as interpreted by our Supreme Court in Family of Butts v. Constantine, 198 Wn2d 27 (2021) and the Executive Order entered by the King County Executive on 7/28/2021, subsequent to the decision in Butts. The IOs reliance on these authorities is misplaced. The IOs contend that because Ms. Butts has some knowledge

of the facts of this case, an Inquest Administrator has no authority to exclude her as a witness. In support of this assertion, they cite this statement in Butts:

Because the inquest jury has commensurate authority to decide what witnesses and evidence are relevant to its inquiry, the **coroner cannot preemptively exempt or bar particular evidence or testimony from the jury's consideration.** Butts, 198 Wn.2d 27 at 58.

Involved Officers' Response to Family's Motion in Limine, at 2.) (emphasis added by IOs)

In the cited portion of the opinion, the Court addressed whether the coroner, or, as inquests are structured conducted in King County, the County Executive, has statutory authority to preempt the admission of certain types of evidence. In particular, the Court addressed whether the County Executive could, by executive order, preempt the admission of testimony from the chief law enforcement officer regarding the involved officers' compliance with training and policy and testimony from the involved officers regarding their mental state at the time of the killing. As the cited quote demonstrates, the Court unambiguously concluded that it could not. The Court then went on to consider what authority the coroner, or, as structured in King County, the inquest administrator, has to decide what evidence is admissible during the course of an actual hearing. On this issue, the Court held that the inquest administrator may exclude evidence or testimony on a case-by-case basis if it is found that "the requested testimony or evidence is irrelevant or unfairly prejudicial, cumulative or unhelpful to the jury's inquiry under the rules of evidence." Butts, at 58. Accordingly, the IOs reliance on Butts is misplaced and their argument is unpersuasive.

The IOs reliance on Section 12.4 of App. 2 of the Executive Order is likewise misplaced. The IOs argue that the cited section "prevents the exclusion of witnesses based on relevance or being cumulative unless "exceptional circumstances" exist. (Involved Officers' Response to Family's Motion in Limine at 2.) In relevant part, Section 12.4 states: "...there is a strong presumption against the exclusion of witnesses **until after their testimony**, and relevant, non-cumulative witnesses should only be excluded by the administrator in exceptional circumstances." The "strong presumption" noted in this section is against the general rule that witnesses be excluded prior to their testimony, a subject that is not at issue here. And the high bar for excluding witnesses only applies to those witnesses with "relevant and **non-cumulative** testimony." I have determined that any testimony by Ms. Butts, while minimally relevant, is still most certainly cumulative and, for good reason, no party has argued

otherwise. Mr. Daniel Yohannes will testify to the events surrounding the robbery and to Mr. Butts' display of a firearm. Officer Merritt will testify regarding his altercation with Ms. Butts, as will Officer Gordillo and Mr. Tom Townsend.¹

2. The Family asks to exclude any testimony by Officer Kennedy about any events occurring after she was struck by a bullet. The request is denied. Similar to Officer Kang, Officer Kennedy may testify to any relevant events that occurred up until she made contact with the EMTs.
3. The Family asks to exclude any testimony from Officer Kennedy about what may have happened if she was not wearing a ballistic vest when she was shot and what was going thru her mind when she was shot. The requests are denied. Such testimony is relevant to the issue of whether Mr. Butts' actions were likely to cause death or serious physical injury and to the decision by Officer Kennedy to use deadly force. However, counsel are directed to instruct Officer Kennedy to avoid reference to and shall not ask any questions designed to elicit speculation by Officer Kennedy as to the specific nature or extent of any potential injuries.
4. The Family asks to exclude testimony by any witness about any lasting emotional impacts experienced since their witnessing or involvement in the events leading to Mr. Butts' death. The request is granted. Counsel are directed to instruct the witnesses to avoid reference to lasting emotional impacts from this experience and shall not ask any questions designed to elicit such testimony.
5. The Family asks to be allowed to give a summation to the jury at the close of the evidence. In light of the fact that this proceeding is non-adversarial, I am not favorably disposed to allow summations. But the EO provides for it so I shall keep an open mind. If any other party desires to give a summation they shall make the request well before the close of evidence. A ruling on the Family's request is **RESERVED**.
6. The Family's request to exclude Officer Pritchard and Tom Townsend as witnesses are denied.
7. The IOs ask to exclude any interrogatories asking the jury to opine on what policies or training may be applicable to the actions of the IOs. EO Sec. 3.2, App. 2 provides

¹ In weighing the relevance of Ms. Butts as a witness, it is worth noting that her testimony would relate to her observations and actions only during the robbery and the assault of Officer Merritt. The relevance of these two events to Mr. Butts' death is that 1) the robbery, is what drew Mr. Butts to the attention of the police in the first place and 2) the assault is the likely cause of Officer Merritt losing his grasp on Mr. Butts' resulting in his flight to the federal building loading dock. Both of these events form steps in the chain of events that led to the shooting and are thus part of the facts and circumstances that the jury must consider. But as noted, there is ample evidence of these two events from other witnesses. Significantly, Ms. Butts did not witness the critical events that took place in the loading dock and thus her testimony would offer no additional evidence on the facts of the immediate events leading to Mr. Butts' death. Thus, in my view, additional testimony from Ms. Butts regarding the robbery and the assault of Officer Merritt, would add nothing to help the jury find facts about how the police were drawn to Mr. Butts or how he ended up in the loading dock. Instead, such testimony would likely distract the jury in its consideration of the immediate facts and circumstance of how Mr. Butts died and tend to focus their attention on preliminary events which, for the most part, are not in dispute.

“...the panel **shall make findings regarding** the cause, manner, and circumstance of the death, including **applicable law enforcement agency training and policy**. The panel shall make findings regarding whether the law enforcement officer complied with applicable law enforcement agency training and policy as they relate to the death.”

The request is denied.

8. The IOs ask to exclude interrogatories regarding SPD Use of Force Policy section 8.200(5) re fleeing suspects. The request as to section 8.200(5) has previously been ordered and so remains. As to the interrogatory as to applicability of and compliance with training regarding barricaded subjects, the issue is **RESERVED** until the close of the evidence.
9. IOs ask to exclude interrogatories asking about individual officer compliance with SPD Use of Force Policy sections 8.200(6) and (7) regarding requesting and rendering medical aid. **RESERVED** until the close of the evidence.
10. The IOs request to exclude Ex 123 (Photo of Off. Kang’s vest) is granted. The testimony elicited from Officer Kang regarding the exhibit (found on pages 77, Lines 2-25, page 78, Lines 1-25 and page 79, Lines 1-4.) is stricken.
11. The IOs request that the images of Mr. Butts’ body as depicted in Exhibits 19, 20, 56, 99, 112 is granted. Denied as to Exhibit 120.
12. The IOs ask to exclude questions to officers regarding their presence or absence at the scene of the robbery. The request is denied. Counsel may make limited inquiry on the issue for the purpose of establishing the sources of the information upon which the officers may have relied.
13. The IOs request to exclude hypothetical questions regarding SPD policy and training was previously addressed by the Order on Pre-Hearing Conference, December 4, 2019. That order provided:

The [inquest program] attorney shall advise the witnesses that examples may be helpful in explaining policies and trainings but that any such examples shall not be based upon the facts of this case. Questions from counsel shall likewise avoid hypotheticals based upon the facts of this case. Objections to any such questions or testimony will be dealt with on a case by case basis during testimony. The parties shall apprise the IA outside the presence of the jury of questions they intend to ask that include hypotheticals that touch upon the specific facts of this case.

The previous Order stands.

14. The IOs requested that the Garrity statements their clients provided be excluded. After the hearing, Counsel for the IOs represented that their clients were invoking their 5th Amendment right to not testify. This issue is **RESERVED** until full consideration can be given to that change in circumstances.

15. SPD asks to preclude questions that elicit testimony already elicited by the IPA. I will not explicitly prohibit. It can be useful to lead into another topic that a party wants to explore. But I would ask counsel to take care and to not drag out this proceeding unnecessarily. Otherwise, I will sustain asked and answered objections.
16. SPD asks to exclude any questions to the officers regarding unrelated use of force incidents. The request is granted. If any party believes that an unrelated use of force incident is relevant, they must raise the issue with me in advance outside the presence of the jury. (And to the extent such an incident is related to a disciplinary issue per the EO in order to be admissible it must be “directly related” to the use of force in this case (See EO, sec. 4.6, App 2).
17. SPD’s request to exclude questions regarding the following subjects is denied at this time but objections to such questions will be addressed on a case-by-case basis:
 - a. Questions to Det. Simmons regarding what could have been done differently regarding his investigation;
 - b. Eliciting testimony or evidence about what could have been done differently by the IOs during the incident;
 - c. Questions regarding purported inconsistencies between SPD policy and applicable training received by the IOs.
 - d. Questions regarding the thoroughness of SPD’s investigation into the shooting.
18. The following issues have been resolved by agreement of the parties:
 - a. Any reference to subsequent post-shooting steps taken by SPD is excluded.
 - b. Any reference to the Justice Department report, consent decree, or irrelevant generalizations, or characterizations of SPD are excluded.
 - c. Any conclusions by Det. Simmons regarding his compliance with policy/training during his investigation or IO compliance during the incident is excluded.
19. The parties agreed that the scope of FIT testimony should be limited so as to exclude any reference to the involuntary nature of the Garrity statements. After the hearing, Counsel for the IOs represented that their clients were invoking their 5th Amendment right to not testify. This issue is **RESERVED** until full consideration can be given to that change in circumstances.

DATED: March 4, 2022.



Michael Spearman
Administrator